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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,521	06/25/2003	Dahv A. V. Kliner	SD8317.1	4093
7590 02/18/2004				
Timothy Evans MS 9031 Sandia National Laboratories 7011 East Avenue Livermore, CA 94550				
			EXAMINER HOFFMANN, JOHN M	
			ART UNIT 1731	PAPER NUMBER
DATE MAILED: 02/18/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,521

Applicant(s)

KLINER ET AL.

Examiner

John Hoffmann

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 53-59 is/are pending in the application.
- 4a) Of the above claim(s) 59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 53-57 is/are rejected.
- 7) ☒ Claim(s) 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Claim 59 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. dated 20 Jan 2004.

Claim Objections

Claim 58 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 57 requires the use of a compound or a complex. Claim 58 limits the reactants to elements. Elements are neither compound or complexes. Claim 58 takes the scope of the invention completely out side the scope of claim 57 - it fails to further limit claim 57. Claim 58 is not further treated on its merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 53-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 53: line 3 indicates that there can be exactly one reactant. However, line 4 seems to require that there are reactant "materials" (i.e. more than one). It is unclear if there can be one, or if there must be more than one. Likewise from lines 5 and 6 it is unclear if there must be more than one powder.

Claim 54: it is unclear if the materials and powders of claim 54 are in addition to the materials and powders of claim 53, or if the claim merely limits the material and powder of claim 54

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 53-54 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by DiGiovanni 5058976

Col10, line 25 discloses a reactant material: it is inherent that there is a source for it. The heating and the flowing are disclosed: col. 10, lines 34-36. As to the finely dispersed powder: since DiGiovanni does the same thing applicant discloses in figure 1, the same finely dispersed powder would result. As to the collection in a silica ampoule col. 10, line 27. The melting to form a boule: col. 10, lines 50-51. The only way to collapse a glass tube is to heat until it is softened. Lines 54-56 disclose the drawing into a rod.

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Claim 54: see claims 10-11 which disclose two different layers which requires two different powders.

Claim 57 is clearly met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiGiovanni as applied to claim 53, and further in view of Berkey 4931076.

DiGiovanni does not disclose the use of a ring burner. It is known in the optical fiber art that ring burners produce uniform heat conditions (Berkey, col. 7, lines 8-10). It would have been obvious to use a ring burner for the DiGiovanni heating, since such supplies uniform heat.

Allowable Subject Matter

Claim 56 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

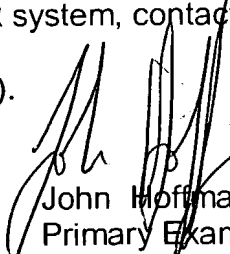
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson, Dorn, Terasawa, and Edahiro are cited as a small sample of the other prior art that could have been used to reject at least the independent claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is (571) 272 1191. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John Hoffmann
Primary Examiner
Art Unit 1731

2-7-04